

REMARKS/ARGUMENTS

Upon entry of the instant amendment, claims 12, 15 and 18 are under consideration in the instant application.

Claim 12 has been amended. Withdrawn claims 1-11 and 14 have been canceled without prejudice or disclaimer, to render the claims in condition for allowance. Claims 13, 16 and 17 have been canceled without prejudice or disclaimer, to render the claims in condition for allowance.

EXAMINER INTERVIEW

Applicant thanks Examiner Philip Smith for the telephonic conference with Applicant's agent, D'vorah Graeser, on September 4 2009 in which the rejections of the claims in the Office Action of July 10 2009 were discussed, as was the cited art. Proposed claim amendments were discussed; agreement was reached regarding the current amendments to claim 12 and the cancelation without prejudice of claim 13. Applicant thanks the Examiner for his time and consideration.

Rejections Under 35 U.S.C. §112

The Examiner has rejected claim 13 under 35 U.S.C, 112, first paragraph, as failing to comply with the written description requirement, as no support is provided for determining secretion levels using imaging. Applicant respectfully traverses the rejections of the Examiner; however, solely in order to expedite prosecution, claim 13 is canceled without prejudice or disclaimer.

Rejections Under 35 U.S.C. §102

The Examiner has rejected claims 12 and 15-18 under 35 U.S.C, 102(e), as being anticipated by Hill (US 6929600). The rejections of the Examiner are respectfully traversed.

The Examiner states that Hill discloses a method of continuously monitoring changes in indications of vital functions of a patient, using the video scope to convey fluids in and out of the patient. Furthermore, the Examiner states that the video scope is used for a prolonged period of time.

However, Hill teaches a video scope device for ease of inserting an endotracheal tube to a patient as two separate components. The video scope device of Hill is clearly taught as being separate from the endotracheal tube, for example as described in col 3, lines 47-49 (indicating that the video scope device is to be used in conjunction with an endotracheal tube). In col 4, lines 24-26, Hill states “The video scope 40 is ideally designed for use with the endotracheal tube 10 but may also be used for other applications. The video scope 40 comprises a stylet 42”...

In addition, as described below, the video scope device of Hill is clearly intended to be removed from the patient once the patient has been intubated, again indicating that the stylet device (which is part of the video scope device as described above) is separate from the endotracheal tube. Since the stylet device is described as providing the capability for suction or lavage, clearly the separation of the two devices (and the fact that the stylet is intended to be removed immediately after intubation) indicates that the device of Hill cannot perform the functions as recited in amended claim 12.

As noted above, the video scope device of Hill is clearly intended to be removed from the patient once the patient has been intubated, as described with regard to Figure 4B, col 11, lines 28-30, and also with regard to col 11, lines 38-49, all of which clearly state that the video scope device is removed once the patient has been successfully intubated. Thus, clearly prolonged endotracheal intubation is not possible with the video scope device of Hill, as recited in amended claim 12.

Amended claim 12 now features the recitation of “wherein said tube is an endotracheal tube” and “wherein said substantial period of time is a prolonged endotracheal intubation”, neither of which is taught or suggested by Hill as described above.

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The present response is intended to be fully responsive to all points of objection raised by the Examiner and is believed to place claims 12, 15 and 18 in condition for allowance. Applicant notes that amended claim 12 was amended solely based upon previously presented claims, which were included in the Examiner's search that led to the Final Office Action. Favorable reconsideration and allowance of the Application is respectfully requested.

CONCLUSION

Applicant believes that the claims are in condition for allowance. If the Examiner believes that a telephonic interview with the undersigned would expedite prosecution of this application, the Examiner is cordially invited to call the undersigned at (301) 952-1011. Please charge any fees associated with this paper to deposit account No. 50-4801.

Respectfully submitted,

/D'vorah Graeser, Reg No 40,000/

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c/o Discovery Dispatch

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Date: September 10 2009
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